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September 30, 2021

Ms. Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington D.C. 20549

Re: Notice of Filing of Proposed Rule Change Proposing to Adopt Listing Standards for Subscription Warrants Issued by a Company Organized Solely for the Purpose of Identifying an Acquisition Target (SR-NYSE-2021-45)

Dear Ms. Countryman,

On behalf of Cadwalader, Wickersham & Taft LLP¹, we are writing in support of the New York Stock Exchange's ("NYSE") proposed rule change captioned above (the "Proposed Rule"), which would allow an acquisition company to list subscription warrants that would become exercisable for common stock in connection with a specific business combination. In this letter, we refer to such a company as a special purpose acquisition rights company, or "SPARC," and to the subscription warrants as "SPARs".

Set forth below are (i) what we believe are the principal advantages of a SPARC compared to a traditional SPAC and (ii) suggested revisions to the Proposed Rule to provide additional protections to investors and to reflect certain technical aspects of exercising subscription warrants.

Principal Advantages of a SPARC compared to a SPAC

No Opportunity Cost of Capital Borne by Public Investors. Those who invest in a SPAC's initial public offering or buy shares on the open market provide the SPAC with capital up front, and bear an opportunity cost by not being able to invest these funds elsewhere.² SPARs could be issued for no consideration, or purchased at a price equivalent to the premium over \$10.00 that an investor would pay for a SPAC share in the open market (a substantially smaller amount than the per-share cost, in most cases). During the period in which the SPARC seeks its initial business combination (a "Business Combination"), SPAR holders would be free to invest their capital as they wish. Holders would provide the SPARC with capital only after a proposed Business Combination is announced and fully disclosed, and only if they wished to invest in the transaction and took the affirmative steps necessary to do so. If

¹ Cadwalader, Wickersham & Taft LLP is counsel to Pershing Square Tontine Holdings, Ltd., and to Pershing Square SPARC Holdings, Ltd., a blank check company that would seek to list its subscription warrants on the NYSE.

² We note that many of the comments submitted to date have stated that the opportunity cost of investing in a SPAC creates an impediment to retail investors' participation in this market.

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SPAR holders were not in favor of the Business Combination, they would simply keep their capital and could choose to sell their SPARs.

We believe this structure is highly advantageous to public investors and their overall investment results, relative to the traditional SPAC structure, where investor money is contributed before a transaction is identified and held in Treasury bills or money market funds generating modest returns for a significant period of time, and where investors must take affirmative steps to have this capital returned to them.

Stronger Bargaining Power for SPARCs in Negotiations with Potential Initial Business Combination Targets: SPACs must complete their Business Combination within a relatively short time period, typically between twelve months and two years from their initial public offering. Under the Proposed Rule, a SPARC would have up to ten years to complete its Business Combination. This longer period is highly advantageous to investors not only because a SPARC would be able to conduct a more selective search and more thorough diligence process, but also because potential target companies would not have the bargaining power created by an approaching deadline. SPAC sponsors may also be incentivized to accept a deal on terms less favorable to public investors, as they could still earn a positive return on their common stock. Removing this deadline pressure would result (all other things being equal) in Business Combinations on terms more favorable to public investors, and less favorable to owners of private businesses.

In short, we view the SPARC structure as solving a fundamental problem embedded in SPAC structures: that the existence of a deadline affects sponsors' incentives and provides potential target companies with leverage to drive better bargains for private capital, both to the detriment of public investors. Moreover, since a SPARC will not be holding investor funds while it searches for a Business Combination, we think that this longer period is reasonable and not to the detriment of public stockholders.

Regulatory Benefits. The SPARC structure also favorably addresses two regulatory concerns that have been the focus of SPAC market commentary.

First, a traditional SPAC invests its trust account in Treasury bills or money market funds from its initial public offering until the earlier of the completion of a Business Combination or liquidation of the SPAC. There is private litigation pending against three SPACs, including Pershing Square Tontine Holdings, Ltd., alleging that SPAC trust account arrangements violate the Investment Company Act of 1940 (as amended, the "Investment Company Act"). We are among over 60 national law firms who have signed a joint statement that those claims are clearly without legal merit.³ We note that a SPARC could be structured so that investor money is held for an extremely limited period of time (a matter of days), and that investor funds could be held in a simple, third-party custodial interest-bearing account.⁴ We believe this structure obviates the Investment Company Act concerns alleged by private litigants.

Second, market commentators and private litigants have raised significant concerns about the use of arguably unduly rosy forecasts by SPACs in connection with their Business Combinations. The staff of

³ Joint Statement available at

https://www.cadwalader.com/uploads/media/Over_60_of_the_Nation%E2%80%99s_Leading_Law_Firms_Respond_to_Investment_Company_Act_Lawsuits.pdf.

⁴ Such an account would not be directly invested in securities, and would earn interest at the rate agreed upon with the custodian.

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the SEC has also publicly discussed whether the provisions of the Private Securities Litigation Reform Act of 1995 (“PSLRA”) protect de-SPAC participants in private litigation over de-SPAC forecasts in a manner that is not available to participants in a conventional initial public offering.⁵ Given that disclosures regarding a proposed Business Combination would be made in connection with the initial capital raise of a SPARC, the availability of the PSLRA safe harbor is even less certain. As a result, any forecasts included in a SPARC registration statement would be subject to the rigorous legal standards applicable to a conventional initial public offering, and private litigants would have recourse for false or misleading forecasts.

Suggested Changes to the Proposed Rule

In suggesting the below modifications to the Proposed Rule, we acknowledge that the final rule should be accommodating of alternate approaches to structuring SPARCs, evolving market practice, and the variety of ways in which de-SPAC transactions have been structured.

Exercisability of SPARs and Disclosure Requirements

Section 102.09(a)

For purposes of this Section 102.09, a “Subscription Warrant” is a warrant issued by a company organized solely for the purpose of identifying an acquisition target and exercisable into the common stock of such company upon entry into a binding agreement with respect to such acquisition.

Section 102.09(b)(iv)

The Subscription Warrants may not be fully exercisable for common stock of a company until after such company enters into a binding agreement with respect to the Acquisition and may not limit the ability of holders to exercise such warrants in full prior to the closing of such Acquisition.

We believe that SPARs should not be exercisable immediately “upon entry” into a Business Combination agreement. In order for investors to make an informed decision, SPARs should become exercisable no earlier than the time at which a post-effective amendment to the company’s initial registration statement, containing comprehensive disclosure regarding the proposed Business Combination, has been declared effective (or definitive, as the case may be) by the SEC.

Section 102.09(b)(iv) should also clarify that ending the exercise period prior to closing would not constitute a limitation on the ability of holders to exercise their warrants in full.

Redemption and Time Limit for Consummating Acquisition:

Section 102.09(b)(vi)

The shares of common stock issued upon exercise of the Subscription Warrants will promptly be redeemed by the issuer of such Subscription Warrants for cash (A) upon termination of the acquisition agreement; or (B) if the Acquisition does not close within twelve months from the date

⁵ See “SPACs, IPOs and Liability Risk under the Securities Laws,” John Coates, Acting Director, Division of Corporate Finance. Available at <https://www.sec.gov/news/public-statement/spacs-ipos-liability-risk-under-securities-laws>.

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of exercise of the Subscription Warrants, or such earlier time as is specified in the operative agreements. If the shares issuable upon exercise of the Subscription Warrants are redeemed, the holders will receive cash payments equal to their proportional share of the funds in the custody account, including any interest earned on those funds.

Redemption: A SPARC could be structured so that shares of common stock are issued concurrently with, and conditional upon, the closing of the Business Combination. At any time at which a Business Combination agreement is terminated, no shares of common stock will have been issued. This structure would be operationally simpler and obviate the need for a redemption of outstanding securities. In addition, a SPARC could be structured to provide a window in which holders submit binding notices of their intent to exercise, with the actual exercise and payment occurring immediately prior to closing. In such a structure, if termination occurred before any SPARs were exercised and payments were received, the notices of intent would be disregarded and the company could search for an alternate Business Combination. If termination occurred once exercise and payment had begun, any funds received would be promptly returned and the company would liquidate. We agree that the rule should include a requirement regarding the return of investor funds, and suggest that the permissible means of doing so expressly include a return of exercise payments prior to the issuance of common stock.

Time Limit: We believe that providing some limitation on the time to consummate a Business Combination is a valuable investor protection. However, we question whether a 12-month period between exercise and closing is best suited to this purpose. A fundamental advantage of a SPARC as compared to a SPAC is that investors don't face the opportunity cost of their funds being held for an extended period. In the possible SPARC structure discussed in the paragraph above, in which exercise occurs days before closing, the Proposed Rule as written would fail to provide a meaningful limitation. We propose, instead, that a SPARC must consummate its Business Combination within 12 months of entering into its Business Combination agreement. We note that this is consistent with the time frame in which most SPAC Business Combination agreements are completed. .

Minimum vs. Fixed Capital Raise:

A significant drawback to SPACs is that the amount of capital to be deployed is determined before the search for a target begins, and is fixed at that level. A SPAC that finds a larger-than-expected Business Combination target on attractive terms will require additional capital. They must raise that financing from private investors (i.e., debt financing or a PIPE), and public investors would have no opportunity to participate. We believe that enabling a SPARC to increase its public capital raise, rather than having to restrict its search to companies within a range of valuations, would facilitate finding the most attractive Business Combination target and would give public investors greater access to investment opportunities.

We propose that the rule explicitly provide for a *minimum* number of shares that may be purchased upon the exercise of a subscription warrant, at a fixed *per share* price. For example, a SPAR would be exercisable for a minimum of one share at a price of \$10.00 per share. If a SPARC determined that it was likely to need a greater amount of capital, it could make each SPAR exercisable for two (or more) shares, each at \$10.00 per share. The numerical initial listing standards would apply to this minimum capital raise, while the "80% test" would apply to the actual proceeds sought.

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Post-Combination Warrants:

We believe that SPARCs should be permitted to issue subscription warrants with a higher exercise price than their “primary” SPARs, which would be comparable to the warrants issued by SPACs. Such warrants would be counted for the purposes of compliance with initial listing standards. Prior to the Business Combination, these warrants would be exercisable on the same terms as the primary SPARs (other than with respect to exercise price), but would not expire if unexercised. Following the Business Combination, these warrants would function like standard SPAC warrants, and expire no later than five years from the date of the Business Combination. This would provide appropriate flexibility in the structure of a SPARC.

Sincerely,

A handwritten signature in blue ink that reads "Cadwalader, Wickersham & Taft LLP".

Cadwalader, Wickersham & Taft LLP

cc: Stephen Fraidin
Gregory Patti
Niral Shah